

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3247 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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ALLJIBHAI JIVRAJBHAI

Versus

SECRETARY

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Appearance:

Shri Deepak M.Shah, Advocate, for the Petitioner.

Kum. P.S.Parmar, Assistant Government Pleader, for Respondents Nos.1, 2 and 3.

Shri P.M.Thakkar, Advocate, for Respondent No.4.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 29/11/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at

Amreli (respondent No.3 herein) on 25th April 1984 in Breach of Condition Case No.3 of 1983 as affirmed in appeal with some modification by the order passed by the Collector of Amreli (respondent No.2 herein) on 1st October 1984 in Appeal No.17 of 1984 as further affirmed in revision by the order passed by the Secretary, Revenue Department (Appeals) at Ahmedabad on behalf of the State Government (respondent No.1 herein) on 19th April 1985 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.3 directed the parties to bring about the original position as the sale transaction was found to be in contravention of law but respondent No.2 in appeal ordered summary eviction of the parties from the land under Section 79-A of the Bombay Land Revenue Code, 1879 (the Code for brief).

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round two parcels of land from survey No.18 admeasuring 4 acres 16 gunthas and 2 acres 01 gunthas situated at village Juna Vaghania in district Amreli (the disputed lands for convenience). It appears from the record that one Kana Megha was granted two parcels of land bearing survey No.1 admeasuring 2 acres 03 gunthas and survey No.18 admeasuring 18 acres 13 gunthas situated at Juna Vaghania as unalienable lands by some order passed by the Collector of Amreli on 15th November 1966 on payment of the occupancy price in the sum of Rs.1604.88 ps. It appears that, after the demise of the original grantee, his son, named, Jivraj Kana, transferred survey No.1 in favour of one Lakhman Shambhu by one sale deed executed on 18th April 1980 for Rs.7000/= and transferred the disputed lands in all admeasuring 6 acres 17 gunthas in favour of the present petitioner by the respective sale deeds executed on 4th January 1977 and 3rd January 1978 for Rs.5000/= and Rs.6000/= respectively. It appears that mutation of the disputed lands in the name of the transferee in the original records was sought. The Mamlatdar of Vadia did not certify the mutation entries on the ground that the lands in question were unalienable. He therefore brought the sale transaction to the notice of respondent No.3 to take action for breach of conditions on which the lands were granted to the original grantee. Thereupon, a show cause notice came to be issued on 17th August 1983 to both the transferees including the present petitioner and the transferor calling upon them to show cause why the sale transaction should not be declared invalid and why the lands should not be forfeited to the State Government. The proceeding came to be registered as Breach of Condition Case No.3 of 1983. The present

petitioner filed his reply to the show cause notice on 5th September 1983 and indicated therein that he was inclined to return the land to the vendor if he was paid back Rs.16000/= by the vendor. Its copy is at Annexure-A to this petition. It appears that, later on, the vendor also filed his reply on 13th September 1983 inter alia indicating therein that he was prepared to take back possession of the lands from the vendees on return of the consideration amount to both of them. Its copy is at Annexure-B to this petition. After hearing the parties, by his order passed on 24th April 1984 in Breach of Condition Case No.3 of 1983, respondent No.3 ordered restoration of possession of the lands in question to the original vendor. Its copy is at Annexure-C to this petition. It appears to have aggrieved the present petitioner. He therefore carried the matter in appeal before respondent No.2 under Section 203 of the Code. A copy of the memo of appeal is at Annexure-D to this petition. It appears to have been registered as Appeal No.17 of 1984. It appears that written arguments were presented on behalf of the present petitioner at the time of hearing of the appeal on 17th September 1984. A copy thereof is at Annexure-D-1 to this petition. By his order passed on 1st October 1984 in the aforesaid appeal, respondent No.2 not only affirmed the order at Annexure-C to this petition but also ordered forfeiture of the lands to the State Government. Its copy is at Annexure-E to this petitioner. The aggrieved petitioners thereupon approached the State Government in revision under Section 211 of the Code. A copy of the memo of revision is at Annexure-F to this petition. It appears to have been heard by respondent No.1. By his order passed on 19th April 1985 in the aforesaid revisional application, respondent No.1 rejected it. Its copy is at Annexure-G to this petition. The aggrieved petitioner has thereupon invoked the extraordinary jurisdiction of this court under Section 226 of the Constitution of India for questioning the correctness of the orders at Annexures-C, E and G to this petition.

3. The impugned orders have been assailed on several grounds and have been sought to be supported also on several grounds. It is not necessary elaborately to deal with rival submissions urged before me as this matter can be disposed of on a short ground.

4. It does not become clear from the material on record as to under what provisions of law the lands in question were granted to the original grantee. Learned Advocate Shri Shah for the petitioner has brought to my notice a certified extract from the record of rights

pertaining to the lands granted to the original grantee by the order passed by the Collector of Amreli on 15th December 1966 for the occupancy price in the sum of Rs.1604.88 ps. It is not a part of the record. However, since it is a certified copy of the extract of the record of rights, I have chosen to look into it rather than asking the petitioner to bring it on record by means of some amendment. Its xerox copy is kept on record. It transpires therefrom that it was an inami land and it was granted under some Rule 43 to the grantee. That appears to be confusing. It does not become clear whether Rule 43 has reference to the Gujarat Land Revenue Rules, 1972 (the Rules for brief) framed under the relevant provisions contained in the Code. It may be mentioned that Rule 43 of the Rules prescribes conditions of grants for building. It transpires from the record that the lands granted to the original grantee were presumably agricultural lands. In that view of the matter, Rule 43 of the Rules would not be applicable.

5. A reference deserves to be made to Rule 37 of the Rules. It provides for grant of land for agricultural purposes. Sub-rule (3) thereof provides for inclusion of the clause specified in Form I in the agreement in Form F for the purpose if lands are granted as unalienable lands. Whether or not such clause as mentioned in Form I was included in the agreement has not been examined. If the lands were granted to the original grantee under some law relating to the inam abolition legislation, it has not been specified under what provision of law such lands came to be granted and under what conditions if permissible. In absence of such inquiry, there could not be any ipse dixit conclusion that the lands were granted to the original grantee as unalienable lands.

6. Since the inquiry in that regard has not been made, it would be desirable to remand the matter to respondent No.3 for making specific inquiry in that regard in view of the contentions advanced by and on behalf of the petitioner in appeal, more particularly in the written arguments that it was not mentioned anywhere in the record of rights that the lands in question were granted to the original grantee as unalienable lands. The impugned orders at Annexures-C, E and G therefore deserve to be quashed and aside for the purpose.

7. In the result, this petition is accepted. The order passed by the Deputy Collector at Amreli (respondent No.3 herein) on 25th April 1984 in Breach of Condition Case No.3 of 1983 at Annexure-C to this petition as affirmed in appeal with some modification by

the order passed by the Collector of Amreli on 1st October 1984 in Appeal No.17 of 1984 at Annexure-E to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 19th April 1985 at Annexure-G to this petition is quashed and set aside qua the present petitioner. The matter is remanded to respondent No.3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. He may give to the parties an opportunity to lead evidence in support of their contention that the lands granted to the original grantee were not of unalienable nature. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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